

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California ISP Association, Inc.,

Complainant,

v.

Pacific Bell Telephone Company (U-1001-C); SBC
Advanced Solutions, Inc. (U-6346-C) and
Does 1-20,

Defendants.

Case 01-07-027
(Filed July 26, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICE OF INTENT TO SEEK COMPENSATION
BY THE CALIFORNIA ISP ASSOCIATION**

On September 14, 2001, the California ISP Association (CISPA) filed a Notice of Intent (NOI) to claim compensation for participation in this proceeding, pursuant to Public Utilities Code Section 1801 et seq. and Rule 76.71 et seq. of the Commission's Rules of Practice and Procedure.¹ On October 22, 2001, Pacific Bell Telephone Company (Pacific) and SBC Advanced Solutions Inc. (ASI) filed responses to the NOI.

¹ Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code.

As required by Section 1804(b)(2), and in consultation with the Assigned Commissioner, I rule that CISPA is a customer. This ruling does not establish that CISPA is eligible for compensation because it has not provided information to satisfy that it meets the significant financial hardship test.

1. Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. A PHC in this case was held on August 15, 2001. The NOI is timely.

2. Eligibility Requirements

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a “customer” and that participation without compensation would pose a significant financial hardship.

2.1 Customer Status

Section 1802(b) defines the term “customer” as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets

the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.* at pp. 30-32; *see, also*, fn. 13-16., 79 CPUC 2d at 648-649.)

CISPA is a non-profit corporation that seeks to support the economic interests of independent internet service providers (ISPs) in California, including advocating for reasonable and non-discriminatory access to public utility facilities that support the transmission of internet traffic. (CISPA NOI, p. 1-2.) CISPA's constituent ISPs are customers of California telephone corporations subject to Commission jurisdiction. CISPA states that it is authorized to represent the views of these ISPs in this proceeding. (CISPA NOI, p. 2.) Further, CISPA states that it is not prosecuting this case to vindicate a personal grievance or in quest of a personal remedy. (79 CPUC 2d at 645.)

CISPA has shown that it is a representative authorized by a customer, as set forth in Section 1802(b).

2.2 Significant Financial Hardship

Section 1804(a)(2)(b) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. For a representative authorized by a customer, Section 1802(g) defines financial hardship as a state in which the customers "cannot afford, without undue hardship, to pay the cost of effective participation." For a group or organization, Section 1802(g) defines financial hardship as a state in which "the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in this proceeding."

CISPA states in the NOI that its participation in this proceeding presents a significant financial hardship for CISPA because its current membership dues will not provide sufficient resources to prosecute the complaint. CISPA does not provide a showing of financial hardship in the NOI, but states that it intends to do so when it submits its request for compensation following the issuance of a final order or decision in this proceeding.

Pacific responds that because CISPA is a representative authorized by a customer, it must show a significant financial hardship by establishing that the “customers” it represents (e.g. the individual CISPA members) “cannot afford, without undue hardship, to pay the cost of effective participation.” (*See* Section 1802(g) and 79 CPUC 2d at 650 and 676-77.) Pacific maintains that CISPA cannot qualify for a significant hardship based on its own financial resources from membership dues. Instead, Pacific contends that to establish its eligibility, CISPA must provide the financial information of the customers who authorized it to serve in a representative capacity. (79 CPUC 2d at 651.) Furthermore, Pacific alleges that because CISPA has no claim by itself and because it does not claim to be a representative of a group authorized in its bylaws or articles of incorporation to represent residential customers, it cannot claim to be anything other than a representative of customers.

Pacific notes that CISPA’s members, as shown by a list at its website, include publicly traded corporations such as Allegiance Telecom and Earthlink, and Lucent is a sponsoring member. Pacific contends that CISPA cannot show that its members will face a “significant financial hardship” to participate in this proceeding. Pacific asks for a ruling that CISPA’s expectation of compensation is unrealistic.

ASI responds that it agrees with Pacific's analysis of the intervenor compensation statute. ASI does not believe the intervenor compensation provisions of the Public Utilities Code are intended to cover participation by organizations of business customers, particularly where such customers have a financial stake in the outcome of the proceeding and can clearly afford to participate in such proceeding.

In its NOI, CISPAC describes how it will represent the interests of ISP customers and it is clear that CISPAC is acting as a representative of customers. I agree with Pacific and ASI that CISPAC cannot claim it meets the standard for a significant financial hardship based on its own resources. Instead, CISPAC must prove that the customers it represents, i.e. its members, cannot afford to participate without undue hardship. This particular situation was discussed at some length in the Commission's 1998 decision in the Intervenor Compensation Rulemaking. In that order, the Commission stated:

We will continue to evaluate the hardship associated with participant's or representative's participation in light of the customer's financial circumstances and the specifics of the proceeding, assessing what constitutes "undue hardship" on a case-by-case basis.

...

For a representative authorized by a customer, we expect the representative to provide the financial information of the customer who authorized him to serve in a representative capacity.

...

[T]he fact that the customer cannot afford to pay the costs of participation must be documented. (D.98-04-059, *mimeo.*, p. 36; 79 CPUC 2d at 650.)

Given this guidance, CISPA should not expect to satisfy the financial hardship requirement simply by providing its own financial information. Should CISPA wish to pursue a compensation claim in this proceeding, it should be prepared to provide the financial information of the customers that it represents.

Furthermore, I note that the D.98-04-059 stated that:

The appropriate financial hardship standard to be applied to a representative authorized by a group of customers, where the “authorized pursuant to its articles of incorporation or bylaws” requirement is not in place, is less clear.... [I]t does not appear appropriate to apply the comparison test to a representative authorized by a group of wealthy customers who form an informal group to avoid the costs of participation. At this juncture, rather than applying the comparison test to such groups as a matter of routine, we will determine which standard should apply given the form of customer asserted and the customer’s specific financial hardship showing. (79 CPUC 2d at 652.)

CISPA is quite clearly a representative of customers and it has not asserted that it is authorized to represent the interests of residential customers. Based on these facts and the guidance provided in D.98-04-059, I find that it is appropriate to apply the “cannot afford, without undue hardship, to pay” standard when evaluating any future significant financial hardship showing by CISPA in this matter.

IT IS RULED that:

1. California ISP Association (CISPA) is a representative of a customer as defined in Section 1802(b).
2. Along with any request for an award of compensation, CISPA must show a significant financial hardship by establishing that the “customers” it represents

(e.g. individual CISPA members) “cannot afford, without undue hardship, to pay the cost of effective participation.”

Dated February 19, 2002, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation by the California ISP Association on all parties of record in this proceeding or their attorneys of record.

Dated February 19, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

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